84-1920

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CLERK

No.

IN THE

Supreme Court of the United States

June Term, 1985

ROBERT A. PFLUGER — *Plaintiff-Appellant Petitioner*

v.

UNITED STATES GOVERNMENT, INTERNAL REVENUE SERVICE — *Defendent-Appellee Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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(a) QUESTIONS PRESENTED FOR REVIEW

1. Does the Federal District Court have Jurisdiction over a suit filed at common law which does not attempt to restrain the collection of a tax but which challenges the Internal Revenue Service to prove that the tax they are collecting does not violate the intent of the constitutional limitation of our Founding Fathers, namely, the prevention of levelling, when that issue has not before been decided by the U.S. Supreme Court?

2. When the Internal Revenue Service does not respond to the complaint in the time proscribed by law, should judgement by default be rendered to the plaintiff and the I.R.S. make to prove their jurisdiction?

3. Did the Circuit Court err in not dismissing the Internal Revenue Services Motion To Dismiss, because it is a "sham"?

4. Considering there is an issue raised, (levelling), never beforeheard by the Supreme Court, is the awarding of reasonable attorney fees by the Appellate Court unreasonable?

5. Does the rewarding of attorney fees restrict 1st amendment rights?

6. Is the rewarding of attorney fees discriminatory against those seeking tax relief from the Court?

7. Does the rewarding of attorney fees violate the concept of jury trials guaranteed by the Constitution as expressed in the Magna Charter which states that,

> "No freeman shall be arrested, or imprisoned, or deprived of his freehold, or his liberties, or free customs, or outlawed, or exiled, or in any manner destroyed, nor will we (the king) pass upon him nor condemn him, unless by the judgement of his peers, or the law of the land."?

8. Are the four laws, 28 U.S.C. 2201; 26 U.S.C. 7421; 26 U.S.C. 7422(a) and 26 U.S.C. 7442, discriminatory against the taxpayer and violate 5th and 7th Amendment rights?

Circumstances of the Case

Petitioner is a Pro Se who learned that:

1. The Intent of the Constitutional Limitation on Taxation is to prevent Levelling.

2. The 16th Amendment did not remove this intent.

3. The 16th Amendment was passed to provide monies for the government to build roads, bridges, buildings and for its legitimate functions and not to redistribute the wealth of classes of people.

4. Laws made pursuant to the 16th Amendment are used to redistribute the wealth of classes of people which results in levelling.

Petitioner wished to have this situation corrected and challenged the I.R.S. to prove their jurisdiction in the light of the levelling argument.

Petitioner filed a suit, not to restrain the collection of a tax, but to have the I.R.S. prove the tax they were collecting, did not violate the intent to prevent levelling.

Petitioners complaint, in addition to the levelling argument contained a number of "tax protestor" arguments which he now considers garbage, and he subsequently hired an attorney to carry his case to the Appellate Court but because the attorney did not understand his case he is now appealing to this Court himself as Pro Se.

(c) TABLE OF CONTENTS

	page
QUESTIONS PRESENTED FOR REVIEW	1-3
CIRCUMSTANCES OF THE CASE	4-5
REFERENCE TO REPORTS	7
JURISDICTION OF THIS COURT	7
CONSTITUTIONAL PROVISIONS	8
CONCISE STATEMENT OF THE CASE	9-10
ARGUMENT	12-21
APPENDIX	21-28

No.

IN THE SUPREME COURT OF THE UNITED STATES

JUNE TERM, 1985

ROBERT A. PFLUGER — PETITIONER

V.

UNITED STATE GOVERNMENT,
INTERNAL REVENUE SERVICE — RESPONDENTS

PETITION FOR WRIT OF CERTIORARE TO THE APPELLATE COURT OF THE SEVENTH JUDICIAL COURT

(d) Reference to Reports

In the appendix is listed a copy of the order denying the suit by the District Court and a denial of rehearing. Also are listed the denial of the Appellate Court for a hearing and a rehearing.

(e) Jurisdiction of this Court

This Court has jurisdiction by virtue of 28 U.S.C. 1254 (1)

The Appellate Court of the Seventh Circuit denied a Motion for Rehearing on March 11, 1985.

(f) Constitutional Provisions

United States Constitution
Art. I Sec. 2 Cl. 3
Art. I Sec. 8 Cl. 1, 6 and 10
Art. III Sec. 2 Cl. 3
Art. III Sec. 3 Cl. 2
Amendments to the U.S. Constitution 1, 9, 10, 16, and 7
The Internal Revenue Code of 1954 as Amended
All of the Direct Payment Benefit laws enacted by the U.S. Congress
U.S.C. 28 Sec. 1331, 1340.

(g) Concise Statement of the Case

Plaintiff, Pfluger, had learned that one reason for the Constitutional limitation on taxation was to prevent levelling and the 16th Amendment did not remove this intent, income taxes were being used to level, and in light of this information wished to have the I.R.S. prove otherwise.

On 7-1-83 Plaintiff, Pfluger as Pro Se filed a Jurisdictional Challenge to the Internal Reve ue Service in Federal Court.

Pfluger did not file this suit in order to prevent the collection of any disputed tax but to have the levelling argument heard.

One hundred and eight days later, the Internal Revenue Service answered the complaint on 10-11-83 with an ill prepared Motion to Dismiss incorporating numerous errors.

Subsequently, Plaintiff tried to obtain a default judgement against the

Government and to have their motion to dismiss declared a "sham" but to no avail. The Court never did rule on the Motion to Dismiss because it's a sham.

Plaintiff further tried to get jurisdiction of the Court by trying to amend his petition for declaratory judgement against the Anti Injunction Act. 26 U.S.C. 7421 (a) The Declaratory Judgement Act 28 U.S.C. 2201 and the Tax Court by pointing out the exceptions to these restrictive laws. Motions were denied.

On 3-21-84 a Motion for Reconsideration was denied.

On 5-21-84, the Court granted the Government Motion to Dismiss.

On 5-31-84 a Motion for Reconsideration was filed by Plaintiff and denied on 6-12-84.

On 6-15-84 a Notice of Appeal was filed.

In the Appellate Court, Pfluger hired an attorney, Joseph Weigel to represent him.

The Appellate Court denied the Appeal and the Motion for Rehearing without a single word of comment on Feb. 6th, 1984 and March 11, 1984 respectively.

Pfluger dismissed his attorney and is appealing this case Pro Se.

The Court in the first instance has jurisdiction by virtue of 28 U.S.C. Sections 1340, and 1331.

(j) Argument

Plaintiff is a Pro Se who knew next to nothing about the law when he drafted his original complaint. He could not express what he wanted to say, nor could the lawyer he hired in the Appellate Court frame his case in the proper arguments.

Plaintiff now has removed all the garbage from his pleadings and what is left is the essence of his complaint. This is it.

The Intent of the Law is the Law. Therefore the intent of our founding fathers as they drafted the Constitutional limitations on taxation and the intent of Congress in 1909 as they drafted the 16th Amendment is the Constitutional law on taxation.

Our founding Fathers intended to prevent levelling in addition to provide monies for the government. That is why they placed in the Constitution that direct taxes had to be apportioned.

Congress in 1909 did not intend to eliminate the intent to prevent levelling, but intended to tax the wealth of the nation by taxing incomes in a graduated way for the purpose of raising needed monies for the expense of the government. They did not intend to redistribute the wealth of classes of people.

Levelling is defined as the redistribution of wealth from a class of people to another class for the purpose of making them more equal.

From 1916 to today there have been inacted numerous direct payment benefit laws which aid specific classes of people. The monies for funding these laws comes from other classes of people. One half of the Federal Budget is attributed to direct payment benefits.

The Supreme Court has never ruled on the question, "Is the Income Tax Act of 1954 as amended, unconstitutional because it is used to levell?"

In the Court system over the years, it seems as though the Intent never played much of a role in the determination of the constitutionality of an income tax. Most attention has been given to the mode or method by which the tax is collected or laid.

This person recalls reading the words of one Supreme Court Justice who said, What difference does it make if a tax is direct or indirect as long as the mode is followed?

The lack of knowledge about the intent by both Congress and the Courts as well as the people has led this country away from the original taxing principle.

This person wishes to have this situation corrected and that is why he filed his Jurisdictional Challenge to the I.R.S.

This suit is not being filed to prevent the collection of an income tax currently in dispute with the I.R.S. Plaintiff has paid his income tax. He is having a dispute with the I.R.S. over taxes but this suit is not directly involved with that. This person is not asking the Court for an injunction against the I.R.S.

WHAT THIS PERSON WANTS CLEAR AND SIMPLE IS FOR THE COURTS TO PAY ATTENTION AND RULE ON HIS LEVELLING ARGUMENT AND TO GIVE SOME LOGICAL ANSWER TO HIS ARGUMENT.

So far no one has.

He wants the I.R.S. to prove that the tax they are collecting does not violate the intent to prevent levelling of the Constitution. He wants the Supreme Court to say yes or no to the question, Has the income tax become a levelling device and therefore is it now unconstitutional?

The only time the Supreme Court has ever used the word levelling in regards to taxes was in Douglas v. California and that was in a dissenting opinion in which the Court affirmed that it would not be unconstitutional to pay for lawyers fees for the indigent especially in the light that Counsel is mandated by the Const.

Jurisdiction

A declaratory judgement is an expeditous way to get a law declared unconstitutional but it not the only way. A common law suit is another way. That is what this suit is, a common law suit. Plaintiff did not ask for a declaratory judgement on the tax law or to restrain the collection of a tax. He asked the Court to order the I.R.S. to prove their jurisdiction under the light of the levelling argument and if they could not, then to stop collecting the tax. This suit, therefor, is exempt from U.S.C. 28, 2201

Pfluger wants the I.R.S. to prove their jurisdiction as any other government agency must do according to law. It is a duty owed to him. He is not presenting to the Court old and stale tax protestor arguments. His argument is original and on point and he should not be required to pay attorney fees to the government for presenting it to the Court. Nor should he receive from the Appellate Court a denial of his pleading with nary a word of explanation. One does not go through the time and expense to bring a case to Court and then receive no word of explanation without becoming indignant. To attempt to punish Pfluger by making him pay attorney fees with out pointing out to him the reason why, is simply an abuse of power and a violation of first and seventh amendment rights.

Pfluger also wants the I.R.S. to be forced to obey the law or suffer the con-

sequences like everyone else. Their reply to the original complaint took over 100 days. Default judgement should have been rendered and they should have been made to prove their case. If U.S.C. 28.2201 is applicable then they lost that protection against suits, by default.

Pfluger also wants the Government's Motion to Dismiss declared a "sham" as it should be. Pfluger pointed out in the record the numerous errors in the complaint and the Court said it would rule on it by mail but never did even after Plaintiff brought the Courts attention to it again in his motion for reconsideration.

The awarding of attorney fees to the government puts an effective damper on a persons' right to petition the government for a redress of grievences and violates 1st amendment rights.

The tax protest movement is not something people are doing for the fun of it. The government plain and simple, is screwing up by spending too much and taxing too much. One of their violations is called stealing. It was to be preventable by a taxing mode. Taking from the haves and giving to the have nots was verboten.

Our founding fathers attempted to limit the rights and powers of the Federal government and prevent tyranny as can be seen by the 9th, 10th and 7th Amendments and Art. I Sec. 8, Cl. 1, 6, and 10 and Art. III Sec. 3 Cl. 2.

The Courts by awarding attorney fees to the government are simply abusing their power. The Courts say that justice determines these awards but the Courts have no right to award the government without providing for a jury trial as per Magna Charter, 7th Amend. and Art. III Sec. 2, Cl. 3.

In addition petitioner tried to amend his original complaint for declaratory judgment against discriminating laws as mentioned. These four laws are not available to other litigants, only taxpayers. As such they violate the 5th Amendment.

In addition they circumvent the peoples right to prevent tyranny of the government by avoiding jury trials as per 7th Amendment and Art. III Sec. 2 Cl. 3 which demand all crimes be by jury. If it is a crime of some sort to petition the government to prevent stealing and overtaxation then there should be a jury trial, not simply a deprivation of property by the Courts because they are tired of hearing the same old arguments and don't know what to do with the tax protestor except tell him to shut up by fining him disguising it as an award.

Conclusion

Since this is a common law suit in the form of a Civil Complaint in the form of a Mandamus and does not seek declaratory judgement nor an injunction, the suit does not come under the restrictive clause of U.S.C. 28, 2201 and the District Court should have jurisdiction.

Further since default judgement and a sham proceeding are present, this case should be remanded to the Court for further proceeding.

Further since Pfluger brought up an original argument he should not have to pay attorney fees as per Courts order.

Further since the four laws mentioned are discriminatory and violate the 5th and 7th Amendments they should be struck down and the argument used of 28 U.S.C. 2201 be voided.

(k) Appendix

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
March 11, 1985
Before
Hon. Walter J. Cummings, Chief Judge
Hon. Richard D. Cudahy, Circuit Judge
Hon. Jesse E. Eschbach, Circuit Judge

Robert A. Pfluger
Plaintiff-Appellant,
No. 84-2021 vs
United States Government, Internal Revenue Service,
Defendent-Appellee.
Appeal from the United States District Court for the Northern District of Ill, WesternDivision. No. 83 C 20107 Judge Stanley J. Roszkowski.

ORDER

On consideration of the petition for rehearing filed in the above entitled

cause by plaintiff-appellant Robert A. Pfluger, ail of the judges on the original panal having voted to deny the same.

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

Unpublished Per Curiam Order
Judgment-Without Oral Argument
UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
February 6, 1985
Before
Hon. Walter J. Cummings, Chief Judge
Hon. Richard D. Cudahy, Circuit Judge
Hon. Jesse E. Eschbach, Circuit Judge

Robert A. Pfluger
Plaintiff-Appellant,
No. 84-2021 vs
United States Government, Internal Revenue Service,
Defendent-Appellee.
Appeal from the United States District Court for the Northern District of Ill, WesternDivision. No. 83 C 20107 Judge Stanley J. Roszkowski.

This cause came before the Court for decision on the record from the

United States District Court for the Northern District of Illinois, Western Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of said District Court in this cause appealed from be, and the same is hereby AFFIRMED, with costs and reasonable attorney's fees awarded to appellee, in accordance with the order of this Court entered this date. A filing as to costs and fees shall be submitted to this Court within 15 days of the date of this order.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

Name of Presiding Judge, Hon. Stanley J. Roszkowski
Case No. 83 C 20107 Date May 18, 1984
Title of Cause Pfluger v. Internal Revenue Service

Order

Defendent's motion to dismiss for lack of subject matter jurisdiction is granted. While the court does not intend to render an advisory opinion concerning the plaintiff's Personal and Subject Matter Jurisdictional Challenge to the Internal Revenue Service, the court does deem it appropriate to direct the plaintiff's attention to the seventh Circuit's recent decision in United States v. Koliboski, No. 83-1634 (7th Cir. 1984).

Order June 12, 1984

Plaintiff's motions for reconsideration and for final judgement are denied.

AMENDMENTS TO THE U.S. CONSTITUION

1st Amendment
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

7th Amendment
In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

9th Amendment
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

10th Amendment
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

16th Amendment
The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

2. CONSTITUTIONAL PROVISIONS

Art. I Sec. 2 Cl. 3 Representatives and direct Taxes shall be apportioned among the several States which may be, etc.

Art. I Sec. 8 Cl. 1 The Congress shall have Power to lay and collect Taxes, Duties, Impost and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

Cl. 6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States.

Cl. 10. To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations.

Art. III Sec. 2 Cl. 3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Art. III Sec. 3 Cl. 2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attained.